

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF OREGON

KAREN ELLIS,

Plaintiff,

v.

COMMISSIONER SOCIAL SECURITY  
ADMINISTRATION,

Defendant.

No. CV 07-209-MO

ORDER

**MOSMAN, J.,**

Counsel for plaintiff has filed several cases in this district on behalf of various plaintiffs each alleging substantially identical claims: (1) a traditional challenge to the agency's decision denying social security benefits, (2) a Freedom of Information Act ("FOIA") claim under 5 U.S.C. § 552, and (3) a constitutional claim under the Fifth and Ninth Amendments challenging the agency's actual or pretextual reliance on "Vocational Expert testimony about numbers of jobs that [the Commissioner] know[s] or should [have] know[n] to be unreliable." First Am. Compl. at 3, ¶ 10(a). In each of these cases, the Commissioner filed a motion to dismiss counts two and three of the complaint for failure to state a claim upon which relief can be granted. Fed. R. Civ. P. 12(b)(1) & (6). In response, each of the plaintiffs filed a motion to consolidate the

Commissioner's defenses.

Exercising my discretion under Fed. R. Civ. P. 42(a), I DENY Ms. Ellis's motion to consolidate (#12). Further, I adopt the reasoning of the Honorable Ann Aiken in *Romans v. Astrue*, No. CV 06-1331-AA (Op. & Order) (May 16, 2007), and GRANT the Commissioner's motion to dismiss (#4). Ms. Ellis failed to exhaust her FOIA claim, and she does not state a colorable constitutional claim.

IT IS SO ORDERED.

DATED this 26th day of June 2007.

/s/ Michael W. Mosman  
MICHAEL W. MOSMAN  
U.S. District Judge